

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LARRY McNAIR,

Plaintiff,

-against-

NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY
SUPERVISION, et al.,

Defendants.
-----X

17-cv-9568 (NSR)
OPINION & ORDER

NELSON S. ROMÁN, United States District Judge:

Plaintiff Larry McNair (“Plaintiff” or “Munoz”), proceeding *pro se*, commenced the instant action asserting claims sounding in violation of 42 U.S.C. § 1983 as against multiple defendants. By letter dated November 15, 2019, Defendants’ counsel informs that Plaintiff purportedly passed away in August 2019. His last known next of kin is Lisa Stevens, Plaintiff’s girlfriend, who he resided with prior to passing. By letter dated February 7, 2020, Defendants submits a copy of Plaintiff’s death certificate, which was also provided to his next of kin.

Rule 25(a)(1) provides, in pertinent part, that:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Rule 25 establishes a ninety-day period for any party to make a motion to substitute a party for the decedent. *See Kaplan v. Lehrer*, 173 F. App’x 934, 935 (2d Cir.2006). The ninety-day period can be extended where there is “an inability or a significant difficulty in identifying the decedent's legal representative or successor. *See Unicorn Tales, Inc. v. Banerjee*, 138 F.3d 467, 470 (2d Cir.1998). Plaintiff’s only known next of kin, notified the Defendants of Plaintiff’s

passing in October 2019. Moreover, a copy of Plaintiff's death certificate was sent to Plaintiff's last known residence where he resided with his next of kin.

In light of the foregoing, Defendants are directed to serve a copy of this Opinion and Order upon Plaintiff's next of kin, Lisa Stevens, at her last known address, and to file proof of service on the docket. Plaintiff's next of kin, Lisa Stevens, shall have until May 10, 2019 (ninety days from service a copy of the death certificate), to move to be substituted as the representative of Plaintiff for the purpose of prosecuting Plaintiff's remaining claim(s). In the event there is no timely substitution, the Complaint shall be deemed dismissed upon Defendants submitting an affidavit informing the Court that no substitution has been requested and upon submission of a proposed order of dismissal.

Dated: March 5, 2020
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge